

**BellSouth Telecommunications, Inc.**  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

**Guy M. Hicks**  
General Counsel

615 214 6301  
Fax 615 214 7406

November 2, 2001

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

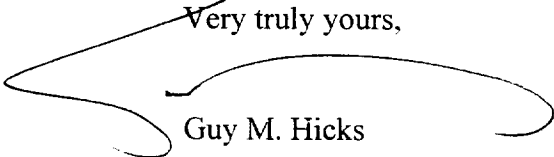
Re: *Approval of the Interconnection Agreement and Amendment Thereto Negotiated by BellSouth Telecommunications, Inc. and Powertel, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*  
Docket No. ~~00-00803~~ 01-00975

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Petition for Approval of the Interconnection Agreement and Amendment Thereto Negotiated by BellSouth Telecommunications, Inc. ("BellSouth") and Powertel, Inc. ("Powertel") Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. The Amendment incorporates the Volume and Term Agreement between the parties. The enclosed Agreement and Amendment were negotiated by Powertel and BellSouth and are consistent with the standards for approval.

Powertel and BellSouth respectfully request that the Petition, Agreement and Amendment be filed, reviewed and considered for approval as expeditiously as possible.

Very truly yours,



Guy M. Hicks

GMH/dt

Enclosure

cc: Jill F. Dorsey, Powertel, Inc.  
Leah Cooper, BellSouth Telecommunications, Inc.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**Nashville, Tennessee**

In Re: *Approval of the Interconnection Agreement and Amendment Thereto Negotiated by BellSouth Telecommunications, Inc. and Powertel, Inc. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996*

Docket No. ~~00-00803~~ 01-00975

**PETITION FOR APPROVAL OF THE INTERCONNECTION AGREEMENT AND**  
**AMENDMENT THERETO NEGOTIATED BY**  
**BELLSOUTH TELECOMMUNICATIONS, INC. AND**  
**POWERTEL, INC. PURSUANT TO SECTIONS**  
**251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

COME NOW BellSouth Telecommunications, Inc. ("BellSouth") and Powertel, Inc. ("Powertel") and respectfully file this request with the Tennessee Regulatory Authority (the "TRA") for approval of the attached Interconnection Agreement and Amendment thereto (the "Agreement"). The Agreement was negotiated between Powertel and BellSouth pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, ("the Act"). The Agreement provides for the continued interconnection of the two companies' networks, thereby facilitating Powertel's provision of commercial mobile radio services ("CMRS") to both residential and business customers in Tennessee. The Amendment incorporates the Volume and Term Agreement between the parties. Powertel and BellSouth, therefore, respectfully request that the Authority act within the 90 days specified by the Act and approve the Agreement and the Amendment.

In support of their request, Powertel and BellSouth state the following:

## **THE PARTIES**

1. BellSouth is an incumbent local exchange carrier authorized to provide local exchange service in Tennessee.
2. Powertel is a telecommunications carrier that has been granted authority by the Federal Communications Commission to provide CMRS in a specific market in Tennessee.

## **THE AGREEMENT**

3. Powertel and BellSouth have successfully negotiated the agreement for the continued interconnection of their networks. The parties have also entered into an Amendment to the Agreement which incorporates the Volume and Term Agreement between the parties. A copy of the Agreement and the Amendment is attached hereto and incorporated herein by reference.

4. BellSouth and Powertel have entered into this Agreement, pursuant to Sections 251 (c) and 252 (a) of the Act.

5. Pursuant to Section 252 (e) of the Act, Powertel and BellSouth are submitting their Agreement and Amendment to the TRA for its consideration and approval.

## **COMPLIANCE WITH THE ACT**

6. First, as required by Section 252(e)(2)(a)(i) of the Act, the Agreement does not discriminate against any other telecommunications carrier. Other carriers are not bound by the Agreement and remain free to negotiate independently with BellSouth pursuant to Section 252 of the Act.

7. Second, the Agreement is consistent with the public interest, convenience, and necessity, as required by Section 252(e)(2)(a)(ii) of the Act.

### APPROVAL OF THE AGREEMENT

8. In accordance with Section 252(e) of the Act, the TRA is charged with approving or rejecting the Agreement between Powertel and BellSouth within 90 days of its submission. The Act provides that the TRA may reject such Agreement only if it finds that the Agreement or any portion thereof discriminates against a telecommunications carrier not a party to the Agreement, or if it finds that the implementation of the Agreement or any portion thereof is not consistent with the public interest, convenience and necessity.

9. Powertel and BellSouth aver that the Agreement is consistent with the standards for approval.

10. Pursuant to Section 252 (i) of the Act, once the Agreement is approved, BellSouth will make the terms and conditions of the Agreement available to any similarly situated CMRS provider.

11. Powertel and BellSouth respectfully request that the TRA approve the Agreement and the Amendment negotiated between the parties without revision as expeditiously as possible consistent with the public interest.

This 2nd day of Nov - , 2001.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.


By: 

Guy M. Hicks  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300  
(615) 214-6301

**CERTIFICATE OF SERVICE**

I, Guy M. Hicks, hereby certify that I have served a copy of the foregoing Petition for Approval of the Interconnection Agreement and the Amendment thereto on the following via United States Mail on the 24 day of Nov, 2001.

Ms. Jill F. Dorsey  
General Counsel  
Powertel, Inc.  
1233 O.G. Skinner Drive  
West Point, GA 31833

  
\_\_\_\_\_  
Guy M. Hicks

**First Amendment to  
Interconnection Agreement between  
Powertel, Inc. and  
BellSouth Telecommunications, Inc.**

This Agreement (the "Amendment") is made and entered into as of April 30, 2001, between Powertel, Inc., a Delaware corporation ("Powertel") and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation.

WHEREAS, Powertel and BellSouth (hereinafter referred to collectively as the "Parties") have entered into that certain Interconnection Agreement, effective September 23, 2000, for the State of Tennessee, which has or will be filed with the Commission in said state (as filed, the "Tennessee Interconnection Agreement"); and

WHEREAS, the Parties have also entered into Interconnection Agreements, effective September 23, 2000, for the States of Alabama, Florida, Georgia, Kentucky, Louisiana and Mississippi (the "Interconnection Agreement") which have or will be filed with the Commissions in each of said states; and

WHEREAS the Parties desire to amend the Tennessee Interconnection Agreement; and

WHEREAS, the Parties have also entered into a contract service arrangement whereby Powertel may purchase certain BellSouth services pursuant to a Volume and Term Agreement having an Effective Date of June 15, 1998 ("Volume and Term Agreement"); and

WHEREAS, the Parties desire to amend the Tennessee Interconnection Agreement to incorporate the Volume and Term Agreement as an attachment to the Tennessee Interconnection Agreement.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Powertel and BellSouth hereby covenant and agree that the General Terms and Conditions of the Tennessee Interconnection Agreement be amended as follows:

1. Section V. (D) (ii) of the Interconnection Agreement is deleted in its entirety and replaced with the following:

V. (D) (ii) Carrier will provide or bear the cost of all trunk groups for the delivery of Local Traffic from Carrier to each BellSouth access tandem and end office at which the parties' networks are interconnected, and,

Carrier will provide or bear the cost of all trunk groups for delivery and receipt of Intermediary traffic; Carrier may supply its own interconnection facilities or may purchase such facilities (a) from BellSouth pursuant to a separate agreement, including but not limited to, the Volume and Term Agreement attached hereto as Exhibit 1 and incorporated herein by this reference or pursuant to tariff for this purpose, or (b) from any other third-party supplier; and

2. The Parties acknowledge and agree that the term of the Volume and Term Agreement exceeds the term of the Tennessee Interconnection Agreement. As such, the Parties hereby agree that the Volume and Term Agreement shall be incorporated into any interconnection agreement subsequently entered into by the Parties for the State of Tennessee for the remainder of the term set forth in the Volume and Term Agreement. If no such subsequent interconnection agreement is negotiated, this Amendment shall survive until the expiration of the term of the Volume and Term Agreement.

3. Except as expressly provided herein, all other provisions of the Tennessee Interconnection Agreement, the Interconnection Agreement and the Volume and Term Agreement shall remain unchanged and in full force and effect.

4. Nothing in this Amendment shall in any way amend, modify, alter, limit, change, restrict or otherwise effect the rights, benefits, duties, obligations or liabilities of the Parties under the Volume and Term Agreement or the rates, terms and conditions contained therein.

5. For purposes of this Amendment, capitalized terms have the meanings set forth herein unless the context requires otherwise. Terms that appear herein (whether or not capitalized) that are not defined herein have the meanings ascribed to them in the Interconnection Agreement or the Volume and Term Agreement, as the case may be, and if not defined therein have the meanings ascribed to them in the Act, or (if not defined therein) have the meanings customarily associated with them based on ordinary usage in the telecommunications industry as of the Effective Date.

6. BellSouth and Powertel covenant that this Amendment shall be promptly submitted to the Tennessee Regulatory Authority for approval pursuant to section 252(e) of the Act, and agree that either or both of the parties is authorized to submit this Amendment to the Tennessee Regulatory Authority.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

**Bellsouth Telecommunications, Inc.**

By: Signature on File

Name: Randy J. Ham

Title: Director-Wireless

Date: June 7, 2001

**Powertel, Inc.**

By: Signature on File

Name: Jim Coover

Title: VP of Operations

Date: May 31, 2001



## VOLUME AND TERM AGREEMENT

THIS VOLUME AND TERM AGREEMENT ("Agreement") is entered as of the 15<sup>th</sup> day of June, 1998 ("Effective Date") into by and between BellSouth Telecommunications, Inc., a Georgia corporation ("BellSouth") and Powertel, Inc., a Delaware corporation, on behalf of itself and its affiliated companies signatory hereto (hereinafter collectively referred to as "Powertel" or "Customer").

WHEREAS, Customer desires to purchase certain services from BellSouth for use in connection with its provision of Commercial Mobile Radio Service communications services; and

WHEREAS, BellSouth desires to provide telecommunication services to meet Customer's requirements; and

WHEREAS, this Agreement sets forth certain rates, terms and conditions for the services to be provided to Customer by BellSouth; and

WHEREAS, the Parties desire to reduce to writing their understanding relating to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

### 1. DEFINITIONS

Capitalized terms used herein shall have the meanings set forth hereunder. Any capitalized terms used but not otherwise defined herein shall have the meaning set forth in the applicable state Tariff (as that term is defined hereunder).

1.1 Acceptance. "Acceptance" (or "to Accept") of Services has the meaning set forth in Section 3.11 and Schedule 3.11 hereof.

1.2 Activation. "Activation" means that Services at a Site have been Accepted, and the Site is operational and available for use by Customer to provide CMRS services to its customers.

1.3 Adds. "Adds" means additions to Services.

1.4 Affiliate. "Affiliate" means any Person directly or indirectly controlling, controlled by or under common control with another. For purposes of this Agreement, such control means the power to vote ten (10%) percent or more of the equity securities or comparable interest of the controlled Person.

COPY

1.5 Anniversary Date. "Anniversary Date" means each annual anniversary of the the Effective Date.

1.6 Annual Revenue Commitment. "Annual Revenue Commitment" ("ARC") is an amount equal to that set forth on Appendix I of this Agreement, adjusted from time to time in accordance with the provisions of this Agreement.

1.7 Annual True-Up. "Annual True-Up" has the meaning set forth in Section 6.11.1.

1.8 Applicable Monthly Rate. "Applicable Monthly Rate" has the meaning set forth in Section 12.4.2 hereof.

1.9 Audit. "Audit" has the meaning set forth in Section 3.6.1 hereof.

1.10 Business Day(s). "Business Day(s)" means any calendar day in which the Customer's offices are open for business.

1.11 Changes. "Changes" means a change of transmission rate or functionality for a Service which does not require a visit to a Customer Site by BellSouth personnel.

1.12 Charges. "Charges" means charge(s), based on the Rates, incurred by Customer for Services and Other Services.

1.13 Commercial Mobile Radio Service ("CMRS"). "CMRS" has the meaning set forth in 47 C.F.R. Section 20.3.

1.14 Comparable Service(s). "Comparable Service(s)" means any service of a "higher level" that is functionally equivalent to the Services or other services and which are offered by BellSouth at any time during the Term. For purposes of this definition "higher level" means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards.

1.15 Competitive Notice. "Competitive Notice" has the meaning set forth in Section 6.5 hereof.

1.16 Contract Service Agreement ("CSA"). "Contract Service Agreement" has the meaning set forth in the following Tariffs, as the case may be: BellSouth Telecommunications, Inc.-Georgia Private Line Services Tariff, Section B5.7; South Central Bell Telephone Company-Tennessee Private Line Services Tariff, Section B5.7; Southern Bell Telephone and Telegraph Company-South Carolina Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Alabama Private Line Services Tariff, Section B5.7; BellSouth Telecommunications, Inc.-Florida Private Line Services Tariff, Section B5.6; BellSouth Telecommunications, Inc.-Mississippi Private

Line Services Tariff, Section B5.7; Southern Bell Telephone and Telegraph Company-North Carolina Private Line Services Tariff, Section B5.1C; and South Central Bell Telephone Company-Louisiana Private Line Services Tariff, Section B5.7; and such other comparable instrument(s) filed with the Kentucky Public Utility Commission as may be required to give full force and effect to this Agreement in the State of Kentucky.

**1.17 Contract Year.** "A Contract Year" is each consecutive twelve (12) month period during the Term following the Effective Date.

**1.18 Deficiency.** "Deficiency(ies)" means failure of any Service or any Other Service(s) to strictly conform to the Specifications.

**1.19 Delete(s).** "Delete(s)" (or "to Delete") means the discontinuation of (to discontinue) one or more Services by Customer's request.

**1.20 Discounts.** "Discounts" mean the applicable percentages for each Contract Year that are set forth in Appendix I of this Agreement.

**1.21 Early Termination.** "Early Termination" means termination by Customer prior to the end of the Term, as described in Section 12.2 hereof.

**1.22 Effective Date.** "Effective Date" means June 15, 1998.

**1.23 Eligible Services.** "Eligible Services" means those Services listed in Appendix II hereof.

**1.24 End User.** "End User" means Powertel, its Affiliates, all officers, employees, agents, contractors, customers or subscribers of the foregoing, and any other Person authorized by Powertel to use its Commercial Mobile Radio Services.

**1.25 Event of Default.** "Event of Default" means an event set forth in Section 13.1 hereof.

**1.26 Expedites.** "Expedites" means accelerated Installation of Services prior to the Installation Date.

**1.27 Expiration Date.** The "Expiration Date" of this Agreement shall be the last day of the Term.

**1.28 Give Back Percentage.** "Give Back Percentage" has the meaning set forth in Section 12.2.2 hereof.

1.29 **Installation (to Install).** "Installation" (or "to Install") means the furnishing of Services or Other Services by BellSouth to Customer at a Site as specified in the Installation Schedule attached hereto as Appendix III, or in a Purchase Order, as the case may be.

1.30 **Installation Date.** "Installation Date" means the date upon which BellSouth is required to complete Installation of Services at a given Site.

1.31 **Interruption.** "Interruption" has the meaning set forth in Schedule 6.7 hereof.

1.32 **Interruption Credit.** "Interruption Credit" has the meaning set forth in Schedule 6.7 hereof.

1.33 **Moves.** "Moves" means a change of (i) Site or (ii) point of demarcation between BellSouth's network and Customer's facilities.

1.34 **Net Charges.** "Net Charges" means Charges to which Discounts have been applied.

1.35 **Net Charge Payment.** "Net Charge Payment" means each payment of monthly Net Charges.

1.36 **Option.** "Option" has the meaning set forth in Section 6.5 hereof.

1.37 **Other Customer.** "Other Customer" means any other similarly situated customer of BellSouth taking Services under a separate agreement.

1.38 **Other Customer Rates.** "Other Customer Rates" means the rates for services provided to any Other Customer.

1.39 **Other Service.** "Other Service" means any service in addition to the Services rendered by BellSouth within the scope of this Agreement.

1.40 **Partial Discontinuance.** "Partial Discontinuance" means Customer's discontinuance of certain Services, as described in Section 12.3 hereof.

1.41 **Partial Termination.** "Partial Termination" means Customer's discontinuance of purchase of a Service Element prior to the end of a Service Period, as more fully described in Section 12.4 hereof.

1.42 **Partial Termination Charge.** "Partial Termination Charge" means charges for Customer's discontinuance of purchase of a Service Element prior to the end of a Service Period, as more fully described in Section 12.4 hereof.

**1.43 Person.** "Person" means an individual, partnership, limited liability company or partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, business unit, division or other entity of whatever nature.

1.44 Personal Communication Service ("PCS"). "PCS" has the meaning set forth in 47 C.F.R. Section 24.5.

**1.45 Proposal.** "Proposal" has the meaning set forth in Section 6.5 hereof.

**1.46 Purchase Order.** "Purchase Order" means Customer prepared documentation used by Customer to order Services under this Agreement, as described in Section 3.3 hereof.

**1.47 Rates.** "Rates" means the recurring and nonrecurring rates for Services (exclusive of Discounts), as set forth in Schedule 1.47 hereof, adjusted from time to time in accordance with the provisions of this Agreement.

**1.48 Regulatory Authority.** "Regulatory Authority" means the Federal Communication Commission ("FCC"), the United States Congress, any public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local health, safety and environmental regulatory authorities) having authority over this Agreement, the Parties hereto, the Services, the Tariffs or any matter related thereto.

**1.49 Revised Applicable Charges.** “Revised Applicable Charges” has the meaning set forth in Section 12.4.1.3.

**1.50 Revised Rate(s).** "Revised Rates" has the meaning set forth in Section 6.5.1 hereof.

**1.51 Revised Service Period.** "Revised Service Period" "RSP" has the meaning set forth in Section 12.4.1.3 hereof.

**1.52 Services.** "Services" means any one or more of the telecommunications services listed in Appendix II to be provided to Customer by BellSouth pursuant to this Agreement.

**1.53 Service Element.** "Service Element means a specific circuit at a specific Site.

**1.54 Service Period.** "Service Period" means the length of time for which Customer has agreed to purchase a particular Service at a Site, as specified on the Installation Schedule or in an accepted Purchase Order, as the case may be.

**1.55 Sites.** "Sites" means Customers' locations where BellSouth is authorized to provide Services.

1.56 **Specifications.** "Specifications" means the Service performance specifications set forth in Appendix IV.

1.57 **States.** "States" means Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina.

1.58 **Tariff(s).** "Tariff(s)" means any of BellSouth's tariff(s) filed with the FCC, any state regulatory commission, or any other Regulatory Authority which are now or in the future applicable to the Services provided to Customer hereunder.

1.59 **Term.** "Term" means a continuous period of five (5) years commencing with the Effective Date, during which this Agreement shall be in effect.

1.60 **Termination Charge.** "Termination Charge" means charges for Customer's termination of Services prior to the end of the Term, as more fully described in Section 12.2.1.

1.61 **Termination Date.** "Termination Date" means the date of any Termination.

1.62 **Third Party Services.** "Third Party Services" means services provided or proposed to be provided to Customer by persons not party to this Agreement, which services are functionally equivalent to and which serve to replace any and all of the Services, in whole or in part, at one or more of the Sites.

1.63 **Underutilization Charges.** "Underutilization Charges" means charges for Underutilization, as more fully described in Section 6.11.2.

1.64 **Updates.** "Updates" means BellSouth's future enhancements to the Services (but excluding Comparable Services), as more fully described in Section 5.2 hereof.

1.65 **Wire Center.** "Wire Center" means a building or space within a building that serves as an aggregation point on BellSouth's network, where transmission facilities and circuits are connected and switched. "Wire Center" can also denote a building in which one or more central offices, used for the provision of exchange services and access services, are located.

## **2. AGREEMENT**

2.1 **Scope and Purpose.** This Agreement is a Contract Service Arrangement ("CSA"), pursuant to which BellSouth shall provide and Customer shall purchase Services within the telephone exchanges served by BellSouth in states of Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, North Carolina, and South Carolina. This Agreement neither constitutes an interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996 (an

"Interconnection Agreement"), nor supersedes any such Interconnection Agreement entered into by the Parties or by any of their respective Affiliates.

**2.2 Relationship Between Tariff and Agreement.** Except as otherwise provided in this Agreement, this Agreement is subject to and controlled by the provisions of Company's lawfully filed and approved Tariffs, and shall include all changes to said Tariffs as may be made from time to time. Provided, however, to the extent permitted by law, the Rates, terms and conditions of this Agreement shall supersede any conflicting provisions of the Tariffs and under no circumstances are the Rates herein to be deemed superseded by any conflicting rates that are set forth in any of said Tariffs.

BellSouth hereby covenants to take any and all necessary action to ensure that the Rates, Discounts, terms, and conditions herein remain in full force and effect at all times throughout the Term. The Parties further agree and acknowledge that Customer has entered into this Agreement in strict reliance upon the enforceability of this Section 2.2 and upon BellSouth's representation, warranty, and covenant made in this Section 2.2 that the Rates, Discounts, terms and conditions of this Agreement shall remain in full force and effect for the Term.

**2.3 Regulatory Approval.**

**2.3.1** The obligations of Customer under this Agreement are expressly conditioned upon BellSouth's filing this Agreement where necessary and otherwise obtaining any and all requisite approvals from and satisfying all regulatory requirements of Regulatory Authorities, as may be necessary or expedient to BellSouth's performance hereunder. BellSouth shall exercise its best efforts to expeditiously obtain said approvals and satisfy all regulatory requirements. In the event BellSouth is unable to satisfy the conditions of the first sentence of this Section 2.3.1 within ninety (90) days after the Effective Date, then Customer may, at its sole option and discretion, elect: (i) to void this Agreement, in any State(s) where regulatory approval has not been granted, including any payment obligations hereunder; (ii) to continue to take Services under any lawful rates, terms and conditions set forth in any Tariff; (iii) to continue to take Services under any unexpired CSA agreement(s) between Customer and BellSouth; or (iv) to renegotiate the rates, terms or conditions of a revised CSA agreement (including the rates, terms and conditions available to Other Customers), to be filed with the applicable Regulatory Authorities; and upon Customer's election of alternative (ii) or (iii) preceding, said new rates, terms and conditions will automatically replace the Rates, terms and conditions set forth herein. Upon Customer's election of alternative (ii) or (iv) in the preceding sentence, BellSouth covenants and agrees to (i) incorporate or (ii) use its best commercially reasonable efforts to renegotiate, such rates, terms or conditions in a revised CSA agreement with all deliberate speed.

**2.3.2** BellSouth shall not make any other regulatory filing affecting this Agreement whatsoever except in strict accordance with the provisions of Section 2.4.1.1 hereof.

## **2.4 Consistency of Agreement.**

**2.4.1 No Voluntary Initiation.** BellSouth shall not during the Term unilaterally initiate the filing of any Tariff to supersede, or attempt in any other manner to alter, revoke or amend, in whole or in part, this Agreement or any term or condition hereof or thereof; provided however, in the event BellSouth is ordered to do so by a Regulatory Authority, it shall strictly comply with the following provisions of Section 2.4.1.1.

**2.4.1.1 Limits on Changes.** If any Regulatory Authority requires this Agreement to be amended, replaced or altered (such amendments, replacement or alterations collectively referred to herein as "changes"), BellSouth (i) shall limit such changes to the specific provisions that the Regulatory Authority has ordered be changed; and (ii) shall make only those changes necessary to satisfy the requirements of the Regulatory Authority that ordered the changes.

**2.4.1.2 Review by Customer.** BellSouth shall give Customer notice with regard to any action directly affecting this Agreement (including any proposed changes hereto) proposed by BellSouth to comply with any orders of Regulatory Authorities. Notice of such action, including a copy of any proposed changes to the Agreement or to any applicable Tariff, as the case may be, shall be given by BellSouth to Customer as soon as available and in no event less than fifteen (15) Business Days prior to filing with any Regulatory Authorities. BellSouth shall provide Customer with a copy of all changes to this Agreement or to any applicable Tariff required by Regulatory Authorities on or before the date they are filed, as well as copies of all other regulatory filings made at any time during the Term by BellSouth in connection with or affecting this Agreement or any applicable Tariff at any time during the Term.

**2.4.2 Remedies.** Notwithstanding the foregoing provisions, nothing in this Section 2.4 is to be construed as limiting Customer's remedies under Sections 12 and 13 hereof.

**2.5 Regulatory Reports.** BellSouth shall provide written notice to Customer of any inquiry or proceeding (including all correspondence related thereto) initiated by any Regulatory Authority to investigate, examine or rule upon this Agreement no later than five (5) Business Days after receipt thereof.

## **3. SERVICES**

**3.1 Agreement to Provide Services.** BellSouth shall provide Services to Customer in accordance with the Rates (reduced by the Discounts), terms and conditions, set forth herein; Customer agrees to pay for Services in accordance with the provisions of Section 6 hereof; these obligations are to be construed as mutually dependent covenants. Services will be available for any lawful use by End Users.





Purchase Order and this Agreement, the terms and conditions of this Agreement shall control and supersede any such conflicting provision.

**3.3.4** Promptly after its acceptance of each Purchase Order, BellSouth shall prepare a BellSouth service order or other acknowledgment reflecting the details of the Purchase Order and confirming the Installation Date and shall distribute same to Customer and to all other Persons or carriers responsible for installing the Services. BellSouth shall be at all times primarily responsible for the accurate processing of Customer's Purchase Orders, and will make good faith efforts to coordinate its Installation of Services with interexchange or other carriers as required.

**3.4** **Quarterly Review.** BellSouth and Customer agree to review Installation and the composition of the Services on a calendar quarterly basis, with the first review to be scheduled on or about the first Business Day of each calendar quarter following the Effective Date. BellSouth shall provide the Customer with a quarterly progress report based upon such review. The contents of the progress report shall be determined by mutual agreement between the Parties.

**3.5** **Billing and Accounting.**

**3.5.1** **Billing Period.** BellSouth shall bill Customer in arrears on a centralized basis at Customer's address specified herein (or at such other address of which Customer may advise BellSouth in writing) for all Services provided during each calendar month or other mutually agreeable billing cycle. All participating Customer accounts will be converted by BellSouth to BellSouth's Customized Large User Bill ("CLUB") format.

**3.5.2** **Billing and Accounting.** BellSouth shall provide Customer with mutually agreed upon billing and accounting information concurrent with the invoice to which the information relates. In addition, BellSouth shall provide Customer with detailed accounting records covering all Services provided and billed under this Agreement, in a mutually agreed upon format and media. The Parties may develop additional accounting records, charge-back methodologies and other systems under mutually agreeable terms, price and conditions.

**3.5.3** **Due Date and Payment.** Customer shall pay BellSouth for all undisputed Net Charges by the past due date reflected on each invoice to avoid paying late payment charges. Customer may withhold payment for all disputed Charges, and written notification of the dispute should be given to BellSouth in accordance with Section 6.10 hereof. Late payment charges, not to exceed one percent (1%) per month after the past due date, may be assessed by BellSouth if undisputed Net Charges are not paid by the past due date of the invoice. BellSouth warrants and covenants that all invoices for Charges will be promptly sent after processing, and that Customer may raise late receipt of an invoice as a billing dispute pursuant to Section 6.10 hereof.

### 3.6 Audits.

3.6.1. Audits. The Customer may, at its expense, from time to time, audit ("Audit") BellSouth's performance under this Agreement. Such Audit may cover items such as (but shall not be limited to) billing accuracy, average time to complete repairs, trouble escalation, Interruptions, and effectiveness of BellSouth's personnel in discharging BellSouth's duties and obligations under this Agreement. BellSouth shall produce any documents reasonably requested by Customer that BellSouth deems non-confidential and appropriate for dissemination to Customer. BellSouth shall cooperate with the person(s) conducting such Audit, and shall promptly take all action necessary to cure all errors, deficiencies or defects in its performance under this Agreement as may be determined by the findings thereof; provided, however, BellSouth's efforts to so cure shall not serve to excuse its obligations under this Agreement, nor to limit Customer's remedies hereunder.

3.6.2 ARC Adjustment. If Charges for Customer's use of Services decrease as a result of any Audit made in accordance with Section 3.6.1, the ARC shall be automatically adjusted downward to reflect such decrease in Charges, effective as of the date of delivery of the Audit report.

3.7 Security. BellSouth shall ensure that all its personnel requiring access to Customer Sites strictly comply with Customer's security procedures, in effect from time to time.

3.8 Records and Logs. BellSouth shall maintain complete and accurate records and logs of all Services and all related maintenance provided under this Agreement. BellSouth will from time to time provide Customer with copies of said records and logs. Information from the records and logs shall be summarized by BellSouth a report prepared from time to time hereunder.

3.9 Disaster Recovery. BellSouth shall exercise its best efforts to make available to Customer disaster recovery measures, including but not limited to, redundant circuits, custom controlled reconfiguration, route diversity, or alternate central office interconnection, or other measures as they become available at rates no less favorable than Other Customer Rates.

3.10 Third Party Services. Nothing in this Agreement shall prevent Customer, at its sole option and discretion, from using any Third Party Services in conjunction with or in addition to the Services. BellSouth agrees to reasonably cooperate in connecting the Services to such Third Party Services upon Customer's request.

3.11 Acceptance. BellSouth shall Install only those Services that have been tested in accordance with BellSouth's standard testing procedures and which operate in strict compliance with the Specifications set forth in Appendix IV. Upon completion of any Installation, BellSouth shall provide notice thereof to Customer. Services are to be deemed Installed and BellSouth may commence billing therefor after they have been Accepted by Customer in writing, electronically, via facsimile or verbally (subject to BellSouth's written confirmation thereof), subject to satisfactory testing of the Services by Customer in accordance with the Acceptance Testing procedures set forth at Schedule 3.11 attached hereto.

#### **4. STAFFING AND ESCALATION PROCEDURES**

**4.1 Trouble Escalation.** BellSouth shall support Customer's use of Services in accordance with the trouble escalation procedures as set forth in Schedule 4.1 attached hereto, and, by this reference made a part hereof.

#### **5. SERVICES REPLACEMENT AND UPDATES**

**5.1 Service Replacement.** BellSouth shall give Customer written notice of any Comparable Services within a reasonable time after they become available. Customer may, at its sole option and discretion, elect, in writing, to replace any or all of the Services with Comparable Services at rates no less favorable than the least of (i) BellSouth's Tariff rates for the Comparable Services, (ii) the lowest rate for such Comparable Services available at that time to any Other Customer, or (iii) such other rates as may be mutually agreed upon between the Parties. Upon Customer's election of this option, said Comparable Services shall automatically be deemed Services, and BellSouth shall (with written confirmation thereof by BellSouth to Customer):

**5.1.1** Promptly replace the Rates for the replaced Services with the applicable rates for Comparable Services;

**5.1.2** Adjust Customer's ARC downward as a result of any network optimization associated with such replacement ; and

**5.1.3** Waive any and all non-recurring charges for such replacement to the extent waiver of such charges is (i) available in the Tariff, (ii) made available to any Other Customer, or (iii) mutually agreed upon by the Parties.

Notwithstanding any other provision hereof, Customer shall not be liable for any Termination Charges, Partial Termination Charges, Underutilization Charges or other similar Charges made by BellSouth pursuant to this Agreement, to any Tariff or any other agreement or instrument whatsoever, by virtue of replacing any or all Services with Comparable Services.

**5.2 Service Updates.** BellSouth agrees to provide Customer, upon request, with any and all Updates for the Services as they become generally available, at standard Tariffed Rates. BellSouth warrants that the addition of Updates shall not cause any degradation of Services such that performance thereof fails to comply with the Specifications.

## 6. RATES AND CHARGES

6.1 Rates and Charges. Except as otherwise provided in this Section 6, and except as they may be supplemented pursuant to Section 5 hereof, Charges for Services shall be calculated at the Rates in accordance with Schedule 1.47 hereof, and reduced by Discounts as described in Section 6.2 following. Charges will be made to Customer for Services (other than Comparable Services) in accordance with said Rates and Discounts.

6.2 Discount Levels. On each monthly invoice, BellSouth shall reduce all Charges billed to Customer for Services by the applicable Discount for such Contract Year set forth at Appendix I.

6.2.1 Charges billed to Powertel under other Contract Service Arrangements or Special Service Arrangements, or for WATSSaver, end user common line charges, Flex Serv service and special access are not eligible for Discounts.

6.3 Rate Assurance. The Parties acknowledge that the Rates will remain fixed for the Term except as otherwise provided in this Section 6, and except as they may be supplemented pursuant to Section 5 hereof:

6.3.1 Other Customer Rates. In the event BellSouth at any time during the Term provides any Other Customers more favorable rates, terms or conditions than those available at that time to Customer under this Agreement, BellSouth shall promptly offer to Customer a new Contract Service Arrangement that includes the more favorable rates, terms or conditions. Such rates, terms or conditions shall be retroactive to the date such lower rates, terms and conditions became effective for such Other Customer. For purposes of determining whether any Other Customer is receiving more favorable rates, terms or conditions, the factors that BellSouth will take into consideration in good faith include, but are not limited to, the service mix, geographic factors and BellSouth's margins therefor. In the event of the aforesaid reduction in Rates, the ARC for each year or part thereof for the remainder of the Term shall be automatically reduced by an amount equal to the difference between (i) Customer's average, actual monthly Charges for the Services to which such lower rate will apply for the three (3) months immediately preceding such decrease and (ii) what the average monthly Charges for such Services for said three (3) month period would have been if calculated at the lower rate, times twelve (12).

6.3.2 Notice. BellSouth shall notify Customer in writing, within thirty (30) days of the effective date thereof, of Other Customer rate decreases described in this Section 6.3 and the intended effective date thereof, provided however, BellSouth's failure to so notify Customer shall not affect Customer's right to receive credit adjustments to its Charges based on same.

6.3.3 Retroactive Effect. BellSouth shall promptly reflect any adjustment or credit to Charges in favor of Customer pursuant to Other Customer rate decreases on Customer's invoice on the next immediately following billing cycle, retroactive to the date said Other Customer rate

decreases became effective; provided, however, that nothing in this Section 6.3.3 shall be construed as limiting Customer's remedies under Sections 12 and 13 hereof. The ARC for the remainder of the Term shall also be adjusted downward effective as of the date such decreases become effective, to reflect the decrease in Customer's Rates.

**6.4 Most Favored Customer.** BellSouth shall review the rates of Other Customers at least one (1) time per Contract Year to ensure that Customer's Charges are in accordance with Section 6.3.1 and, upon completion of such review, shall make any corresponding adjustments or credits to Customer's Charges within the billing cycle immediately following such review, retroactive to the time such Other Customer rates became effective.

**6.5 Third Party Services.** If at any time after the twenty fourth (24th) month of the Term, Customer is offered a bona fide proposal for Third Party Services at rates that are at least 20% percent less than the Rates for any or all of the Services for a volume commitment equal to or less than the ARC ("Proposal"), Customer shall provide BellSouth notice of the Proposal ("Competitive Notice"), together with information reasonably sufficient to validate the terms, rates and volume commitments of the Proposal, thereby giving BellSouth the right and option ("Option") to respond to the Proposal as described herein; provided, however, Customer shall not be required to disclose the identity of the Person making the Proposal or to disclose any other information that would violate any confidentiality obligations to such Person.

**6.5.1** Upon receipt of a Competitive Notice, BellSouth may exercise its Option by delivering Customer a written proposal for provision of Services at rates ("Revised Rates") that are no greater than fifteen (15%) higher than the rates in the Proposal.

**6.5.2** BellSouth shall have fourteen (14) Business Days from its receipt of the Competitive Notice to deliver to Customer notice in writing of its exercise of the Option. BellSouth shall have an additional thirty (30) consecutive days after delivery of its notice of exercise of the Option to deliver its written alternative proposal, together with such Revised Rates, to Customer.

**6.5.3** If BellSouth elects not to exercise the Option within fourteen (14) Business Days of its receipt of the Competitive Notice, Customer may, at its sole option and discretion, by written notice to BellSouth, discontinue use of the Services to be replaced by the Third Party Services without liability of any kind, including without limitation, any Termination Charges, Partial Termination Charges, Underutilization Charges or any other similar charges set forth in the Tariffs, and, upon such discontinuation the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to Customer's average, actual monthly Charges for the Services to be replaced with Third Party Services for the three (3) months immediately preceding the month in which the Competitive Notice was given times twelve (12).

6.5.4 If BellSouth exercises the Option, the Rates shall be deemed automatically reduced to the Revised Rates and any Charges for the Services to which the Revised Rates will apply shall automatically be readjusted to reflect such decrease, retroactive to the date of the Competitive Notice. Additionally, the ARC for each year or part thereof for the remainder of the Term shall be deemed automatically reduced, effective as of the date of the Competitive Notice, by an amount equal to the difference between (i) Customer's average, actual monthly Charges for the Services to which the Revised Rates will apply for the three (3) months immediately preceding the month in which the Competitive Notice was given and (ii) what the average monthly Charges for such Services for said three (3) month period would have been if calculated at the Revised Rate times twelve (12).

6.6 **Rates and Charges for Moves, Adds, Changes and Expedites.** Except as otherwise provided in this Section 6, Rates for Moves, Adds, Changes and Expedites are set forth in the applicable Tariffs from time to time in effect during the Term

6.7 **Interruptions and Credits.** Except where caused by negligence of Customer or failure of facilities furnished by the Customer, Customer shall be entitled to Interruption Credits as set forth at Schedule 6.7 for any and all Interruptions. Interruption Credits shall accrue from the time that Customer gives oral or written notice to BellSouth that an Interruption has occurred, until the time that said Interruption has been cured to Customer's reasonable satisfaction. Customer agrees to promptly release any affected circuits for testing and maintenance upon BellSouth's reasonable request. Interruption Credits will not apply to Interruptions scheduled in advance by Customer or BellSouth, subject to reasonable prior notice thereof to the other Party. BellSouth shall apply all Interruption Credits accrued within a calendar month to Customer's Charges on the next immediately following billing cycle.

6.8 **Business Downturn or Divestiture.**

Notwithstanding the provisions of this Agreement regarding Customer's failure to satisfy the ARC, in the event Customer:

6.8.1 (i) Experiences a business downturn beyond Customer's control that results in a customer end-user growth rate that is less than one-half of the projected average growth of the PCS industry based on U.S. Commerce Department statistics (or other generally recognized statistics for the PCS industry) (such downturn hereinafter referred to as a "Business Downturn"), or (ii) sells one or more of its Affiliates or operating divisions or eliminates product lines or areas of geographic coverage (such sale or elimination hereinafter referred to as a "Sale"); and

6.8.2 As a result of such Business Downturn or Sale, Customer reasonably believes that its Charges for use of Services during any Contract Year will be less than the ARC; and

6.8.3 Customer certifies in writing, with reasonably detailed support, no later than 30 days prior to any Anniversary Date of said Contract Year to BellSouth that it will not substitute

such diminished usage of Services with telecommunications services provided by any other carrier unaffiliated with BellSouth, together with other nonproprietary information supporting Customer's claim of Business Downturn or Sale reasonably requested by BellSouth; then

6.8.4 BellSouth shall reduce Customer's ARC for each year for the remainder of the Term, based on, as applicable, either (i) Customer's average monthly Charges or (ii) the divested Affiliate's or operating division's average monthly Charges for Services, in either case measured by the average of the three (3) full calendar months immediately preceding the Business Downturn or Sale, respectively. The revised ARC will become effective as of the first calendar day of the Contract Year immediately following the Contract Year during which the Business Downturn or Sale occurs, (i) the revised ARC will automatically replace the original ARC under this Agreement, (ii) Customer shall remain liable for Charges based on the revised ARC, and (iii) Customer and BellSouth shall in good faith negotiate a reduction in the Discounts commensurate with the reduction in the ARC.

## 6.9 Taxes.

6.9.1 Taxes. Customer shall be responsible for payment of applicable taxes for Services provided hereunder, subject to the condition that all such taxes be separately and clearly identified in detail on BellSouth's invoices; provided, however, Customer shall not be liable for payment of federal, state or local excise, sales, use or similar taxes from which the Services are exempt. Notwithstanding any provision hereof, BellSouth shall be fully and solely responsible for appropriate identification, segregation, and other applicable compliance measures required to ensure the availability of such tax exemptions for Services ("Exempt Services") provided hereunder, and shall promptly reimburse Customer (in the form of a credit to Customer's account) for the full amount of any such taxes improperly billed to Customer for any Exempt Services.

6.10 Disputed Charges. Customer shall make a separate claim in writing, with reasonable support, for any credit for erroneously billed Rates, Charges, Discounts, Partial Termination Charges, Termination Charges or other reasonable credit to which Customer believes itself to be entitled, and BellSouth shall promptly address and resolve each such claim. The Parties shall each promptly appoint a duly authorized representative to address such disputes, and shall each exercise good faith efforts to promptly resolve any and all such claims. BellSouth may neither suspend the provision of Service, nor terminate this Agreement during the pendency of any such dispute. Any disputed amounts subsequently resolved in BellSouth's favor will be subject to late payment charges in accordance with Section 3.5.3. For any disputed amounts resolved in favor of the Customer and subsequently credited to the Customer's account, BellSouth will apply interest to the credit in an amount equal to the late payment charge as set forth in Section 3.5.3. If, their mutual good faith efforts notwithstanding, the Parties are unable to resolve any payment dispute within thirty (30) calendar days following Customer's written notice made pursuant to this Section 6.10, then the matter will be submitted to binding arbitration as set forth in Section 15.9.



**6.11.1 Annual True-Up.** With ninety (90) days after the end of each Contract Year BellSouth will compare all Customer's actual charges (before application of any Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff) with the applicable ARC for such Contract Year (said comparison referred to herein as the "Annual True-Up"). The following charges to Customer will contribute to meeting the ARC: (i) Charges for the Services (before application of any Discounts or Interruption Credits provided pursuant to this Agreement or to any applicable Tariff); (ii) charges for interstate special access; (iii) charges for FlexServ service; and (iv) Partial Termination Charges.

**6.11.2.1** In the event the ARC is adjusted due to a Business Downturn, Sale, Audit, Comparable Services replacement or for any other reason set forth in this Agreement, the ARC levels contained in Appendix I shall be reduced.

- (i) Termination, Early Termination or Partial Discontinuance without liability by either Party, or
- (ii) An Event of Default with regard to BellSouth's obligations under this Agreement or an Adverse Regulatory Determination as set forth in Section 14.1, or
- (iii) A Force Majeure event as described in Section 10 hereof.

**7.1 Nondisclosure.** The Parties shall (i) maintain the confidentiality of this Agreement, and the information and materials of the other that may be reasonably understood, from legends, the

nature of such information itself and/or the circumstances of such information's disclosure, to be confidential and/or proprietary thereto or to third parties to which either of them owes a duty of nondisclosure (collectively, "Confidential Information"); (ii) take reasonable action in connection therewith, including at least the action that each takes to protect the confidentiality of its comparable proprietary assets; (iii) to the extent within their respective possession and/or control, upon termination of this Agreement for any reason, immediately return to the provider thereof all Confidential Information not licensed or authorized to be used or enjoyed after termination or expiration hereof, and (iv) with respect to any person to which disclosure is contemplated, require such person to execute an agreement providing for the treatment of Confidential Information set forth in clauses (i) through (iii). The foregoing shall not require separate written agreements with employees and agents already subject to written agreements substantially conforming to the requirements of this Section, nor with legal counsel, certified public accountants, or other professional advisers under a professional obligation to maintain the confidences of clients.

**7.2 Exceptions to Nondisclosure.** Notwithstanding the foregoing, the obligation of a person to protect the confidentiality of any Confidential Information or materials shall terminate as to any information or materials which: (i) are, or become, public knowledge through no act or failure to act of such person; (ii) are publicly disclosed by the proprietor thereof; (iii) are lawfully obtained without obligations of confidentiality by such person from a third party after reasonable inquiry regarding the authority of such third party to possess and divulge the same; (iv) are independently developed by such person from sources or through persons that such person can demonstrate had no access to Confidential Information; or (v) are lawfully known by such person at the time of disclosure other than by reason of discussions with or disclosures by the Parties. In the event disclosure of Confidential Information is required by any Regulatory Authority, the disclosing Party shall (i) promptly advise the other Party; and (ii) seek confidential treatment by such Regulatory Authority of any disclosed Confidential Information to the extent available in the applicable jurisdiction.

## **8. REPRESENTATIONS, WARRANTIES AND COVENANTS**

BellSouth represents, warrants, and covenants that:

**8.1 Compliance with Laws.** The provision of Services hereunder and under the Tariffs is and shall be throughout the Term in full compliance with all applicable laws, including without limitation all applicable rules, regulations and policies of all Regulatory Authorities. The Rates recover BellSouth's costs, meet applicable standards of rate regulation, and are otherwise in full compliance with all applicable review standards issued by all Regulatory Authorities.

**8.2 Compliance with Specifications.** Upon Acceptance by Customer of any Services, such Services shall continuously operate strictly in accordance with the Specifications throughout the Term. BellSouth shall, at mutually agreed upon intervals, provide Customer with all reports, test results and other documentation necessary to demonstrate the continuous operation of the Service in accordance with the Specifications. If BellSouth's standard test procedures or Customer's own

audit(s) establish that an installed line, circuit, system or other Service(s) component does not perform in accordance with the Specifications, then (i) BellSouth shall immediately commence and diligently pursue efforts to correct such Deficiency; and (ii) Customer shall be entitled to Interruption Credits until such Deficiency has been corrected to Customer's reasonable satisfaction.

**8.3 Non-Suspension of Services.** Except by reason of an Event of Default by reason of Customer's non-payment of undisputed charges, BellSouth shall not suspend or cancel Services to any Site; provided, however, this provision shall not apply to Interruptions scheduled by BellSouth with Customer in advance for testing purposes. This provision shall survive the termination of this Agreement.

**8.4 Legal Authority and Enforceability.** (i) The execution, delivery and performance of this Agreement (together with regulatory filings related thereto), and any collateral agreements related thereto, and the consummation of all transactions contemplated hereby, have been duly authorized by all requisite corporate action; (ii) this Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby to which BellSouth is a party constitute the valid and legally binding obligations of BellSouth, enforceable against BellSouth in accordance with their respective terms; (iii) the execution, delivery and performance by BellSouth of this Agreement and the agreements provided for herein (together with any regulatory filings related thereto), and the consummation of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (x) violate the provisions of any law, rule or regulation applicable to BellSouth, (y) violate any judgment, decree, order or award of any court, or Regulatory Authority binding upon BellSouth, or (z) conflict with or violate the terms of any other agreement by which BellSouth or its property is bound.

**8.5 Waiver of Rights.** BellSouth waives and relinquishes, to the maximum extent permitted by law, any and all rights it has or may have at any time during the Term, at law or in equity, to raise or assert in any manner, at any time, in any forum, action or proceeding, the "filed rate doctrine" or any similar argument for the purpose of challenging or contesting the validity or enforceability of this Agreement, all amendments and modifications hereto, the provision of Services hereunder, or the Rates and Discounts set forth herein.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

### **9.1 Intellectual Property Indemnification.**

**9.1.1** BellSouth represents and warrants that neither the software, hardware, or any other materials provided to Customer hereunder or utilized by BellSouth in operation of the Services will infringe upon any patent, copyright, trade secret or other proprietary right of a third party (collectively, "Proprietary Rights"). BellSouth shall defend, settle, or otherwise manage at its sole cost and expense any claim, suit or action against the Customer or any End User, or any of their respective directors, officers, employees or agents (collectively "Indemnitees") for infringement of

any Proprietary Right arising directly or indirectly from an Indemnitee's use of the Services or use of any other materials furnished hereunder by BellSouth. BellSouth shall have the sole right to conduct the defense of any such claim, suit or action and all negotiations for its settlement or compromise. BellSouth agrees to indemnify and hold Indemnitees harmless from and against any claim, action, loss, damage, liability or expenses, including without limitation reasonable attorney's fees, arising or incurred directly or indirectly from or in connection with any such claim, suit or action.

9.1.2 Customer agrees to give BellSouth prompt written notice of any written threat, warning, or notice of any such claim, suit or action related to the Services and to provide copies of applicable papers served upon or received by Customer. BellSouth agrees to give the Customer prompt written notice of any written threat, warning or notice of any such claim, suit or action against BellSouth or, to BellSouth's knowledge, against any user or supplier of components of software utilized in the Services which could have a material adverse impact on the price, availability, quality or performance of the Services or Indemnitee's ability to use the Services.

9.1.3 If the use or provision of the Services or other materials furnished hereunder is enjoined, BellSouth shall, at its own expense, either: (i) procure for Customer the right to continue using the Services or materials; or (ii) modify the Services and/or materials to become non-infringing (provided that such Services as modified remain, in the opinion of Customer, functionally equivalent to the Services); or (iii) substitute for the Services functionally equivalent (in the reasonable opinion of Customer), non-infringing Services and/or materials provided by BellSouth at no additional charge to Customer.

## 10. FORCE MAJEURE

10.1 General. Neither Party shall be liable to the other for any delay, impairment or failure to perform during any period in which such delay, impairment or failure is (i) due to causes beyond its control and reasonable anticipation, and (ii) without such Party's fault or negligence (hereinafter a "Force Majeure"), including, but not limited to, fires, floods, epidemics, third-party negligence, quarantine restrictions, war, labor disputes and freight embargoes; provided, however, that Interruption Credits shall fully apply to the Customer's Charges throughout any Force Majeure.

10.2 Duty to Mitigate. Each Party whose performance is impaired under this Section 10 shall exercise its best efforts (including interconnection and cooperation with other carriers) to mitigate the extent of such delay or failure, including those arising from labor disputes or strikes.

## 11. RELATIONSHIP OF PARTIES

11.1 Representations and Authority. Nothing in this Agreement shall be construed as creating a joint venture or partnership between the Parties. Neither Party has or shall have any

authority to bind, assume any obligation for or incur any debt on behalf of the other Party. Nothing in this Agreement shall be construed as preventing Customer from entering into agreement(s) with other carrier(s) or vendor(s) for the provision of services which are the same or similar to Services.

## 12. TERMINATION

**12.1 Transitional Support.** In the event Customer elects termination, Early Termination, Partial Termination of Service, or Partial Discontinuance of this Agreement by reason of (i) an Event of Default of BellSouth's obligations, (ii) an Adverse Regulatory Determination, or (iii) as otherwise authorized herein, BellSouth covenants to reasonably cooperate in facilitating Customer's conversion of Services to Third Party Services, including the continued provision of Services to Customer at the Rates for a period of up to four (4) months following the date of termination or discontinuance, until such conversion is completed, in a manner reasonably satisfactory to Customer or its counsel.

**12.2 Early Termination.** Customer shall have the right at any time during the Term hereof to terminate this Agreement and all outstanding Purchase Orders ("Early Termination") upon the following terms and conditions specified below:

**12.2.1 Termination at Customer's Option with Liability.** If such Early Termination occurs prior to the end of the Term, Customer shall give BellSouth ninety (90) days advance written notice of such termination and shall pay BellSouth a Termination Charge equal to the following:

**12.2.2 Give Backs.** The product of (i) total Net Charge Payments made through the Termination Date, multiplied by (ii) a percentage (the "Give Back Percentage") equal to the following:

<u>Give Back Percentage</u>	<u>Termination Date falls on or before:</u>
44.93%	1st Anniversary Date
31.62%	2nd Anniversary Date
16.72%	3rd Anniversary Date
3.33%	4th Anniversary Date
1.69%	5th Anniversary Date;

plus

**12.2.2.1 Interest.** Interest for each Net Charge Payment in an amount equal to the product of (i) the Net Charge Payment, multiplied by (ii) the Give Back Percentage, multiplied by (iii) the number of complete calendar months between the date of the Net Charge Payment and the Termination Date, multiplied by (iv) one percent (1%).

**12.2.3 Sole Termination Charge.** The application of the Termination Charge pursuant to this Section shall be in lieu of any other Termination Charges, Underutilization Charges or other similar charges made by BellSouth pursuant to this Agreement, any Tariff or any other

agreement or instrument. Provided, however, notwithstanding the foregoing, Customer shall remain liable to BellSouth for Partial Termination Charges calculated in accordance with Section 12.4.1.

**12.2.4 Termination by Customer Without Liability.** Any other provision of this Agreement to the contrary notwithstanding, Customer may, but shall not be obligated to, terminate this Agreement, in whole or in part, upon sixty (60) days advance written notice to BellSouth, without liability of any kind, including without limitation, Underutilization Charges, Termination Charges, Partial Termination Charges or other similar charges made by BellSouth pursuant to this Agreement, to any Tariffs or to any other agreement or instrument, in the event of:

**12.2.4.1** The occurrence of an Event of Default with reference to BellSouth's obligations, as set forth in Section 13.1.1; or

**12.2.4.2** An Adverse Regulatory Determination as set forth in Section 14.1 in which event Customer may exercise any election set forth in the second sentence of Section hereof.

**12.3 Partial Discontinuance Without Liability.** Customer may discontinue purchase of any Service Element as a result of Chronic Interruptions (as defined below) at any time, upon thirty (30) days advance written notice to BellSouth, without liability of any kind, including without limitation any Underutilization Charges, Termination Charges, Partial Termination Charges or other similar charges set forth in the Tariffs. If Customer discontinues purchase of a Service Element having Chronic Interruptions and does not replace such Service Element with substitute service from BellSouth, the ARC for each year or part thereof for the remainder of the Term shall be automatically reduced, effective as of the date Customer discontinues purchase of a Service Element, by an amount equal to the average, actual monthly Charges for the discontinued Service Element measured over the last three (3) billing months prior to discontinuation times twelve (12). A Service Element shall be deemed to undergo "Chronic Interruptions" upon the occurrence of (i) three (3) Interruptions of said Service Element, or (ii) cumulative Interruptions (in the aggregate) of said Service Element of twenty-four (24) or more hours, within any three (3) consecutive calendar months of the Term.

#### **12.4 Partial Termination of Service With Liability**

Customer shall have the right at anytime during the Term hereof, to discontinue its purchase of any Service Element upon no less than thirty (30) days advance written notice to BellSouth. If Customer elects to discontinue its purchase of a Service Element pursuant to this Section, it shall pay BellSouth a Partial Termination Charge, calculated as follows:

##### **12.4.1. Partial Termination Charges.**

**12.4.1.1** If Partial Termination occurs at anytime during the first twelve (12) months of the Service Period, the Partial Termination Charge shall equal the number of months

remaining in the Service Period times the Applicable Monthly Rate for the discontinued Service Element;

**12.4.1.2** If Partial Termination occurs after the twelfth (12th) month and before the twenty-fourth (24th) month of the Service Period, the Partial Termination Charge shall equal the number of months remaining in the Service Period times sixty percent (60%) of the Applicable Monthly Rate for the discontinued Service Element ; and

**12.4.1.3** If Partial Termination occurs at any time after the twenty-fourth (24th) month of the Service Period, the Partial Termination Charge, if any, shall equal the difference between (i) Customer's actual monthly Charges for the discontinued Service Element for the number of complete calendar months in the period of time commencing with (x) the first month of the Service Period and ending with (y) the month in which the discontinuance notice is delivered to BellSouth (said period of time hereinafter referred to as the "Revised Service Period") and (ii) what Customer's Charges for the discontinued Service Element for the Revised Service Period would have been if calculated at an Applicable Monthly Rate based on the Revised Service Period (hereinafter "Revised Applicable Charges").

**12.4.2 Applicable Monthly Rate.** For purposes of this Section 12.4, Applicable Monthly Rate means the Rate for the Service Element based on the length of the Service Period or Revised Service Period, as the case may be.

**12.4.3 Annual Calculation of Partial Termination Charges.** Within ninety (90) days after the end of each Contract Year BellSouth will calculate Revised Applicable Charges for Service Components discontinued by Customer during the preceding Contract Year, compare the Revised Applicable Charges with Customer's actual Charges (before application of any discounts or Interruption Credits provided pursuant to this Agreement or any applicable Tariff), for Service Components discontinued by Customer, during the preceding Contract Year, and calculate Partial Termination Charges for such Contract Year. BellSouth shall bill and Customer agrees to pay, pursuant to Section 3.5.3 hereof, after application of the Discount, all undisputed Partial Termination Charges for the preceding Contract Year. BellSouth agrees to send Customer copies of all records and accounting information supporting its calculation of Revised Applicable Charges and Partial Termination Charges along with Customer's invoice for such Partial Termination Charges. BellSouth must invoice Customer for any Partial Termination Charges within sixty (60) days of the aforesaid calculation and failure to do so shall constitute a waiver of said Partial Termination Charges.

**12.4.4 Sole Charge.** The application of the Partial Termination Charge pursuant to this Section 12.4 constitutes BellSouth's sole remedy for Customer's Partial Termination of Service and is in lieu of any other Termination Charges, Underutilization Charges or any other similar charges made by BellSouth pursuant to this Agreement, to any Tariff or to any other agreement or instrument.

### **13. DEFAULT AND REMEDIES**

**13.1 Events of Default.** Upon ten (10) days prior written notice either Party may terminate this Agreement or any Purchase Order(s) issued hereunder, in whole or in part, without cost or liability to the terminating Party, or may exercise any other right or remedy available to it, upon the occurrence of an Event of Default by the other, as hereinafter described; provided, however, that the non-defaulting Party seeking termination shall have previously given the other Party notice of such Event of Default and forty-five (45) days to cure.

**13.1.1 Default by BellSouth.** An Event of Default shall have occurred with respect to BellSouth if:

**13.1.1.1** BellSouth has breached any of its material obligations, covenants or warranties or made any material misrepresentation hereunder; or

**13.1.1.2** Customer has exercised its right of Partial Discontinuance pursuant to Section 12.3 with respect to one hundred (100) or more Service Elements within any period of six (6) consecutive calendar months.

**13.1.2 Default by Customer.** An Event of Default shall have occurred with respect to Customer if (i) Customer has breached any of its material obligations or warranties or made any material misrepresentation hereunder, or (ii) Customer shall have failed to make any undisputed payment due in accordance with the provisions hereof within thirty (30) days after receipt of written notice of delinquency.

**13.1.3 Default of Either Party.** An Event of Default shall have occurred with respect to either Party to this Agreement if such Party:

**13.1.3.1** Ceases to do business as a going concern;

**13.1.3.2** Makes a general assignment for the benefit of, or enters into any composition or arrangement with creditors;

**13.1.3.3** Is unable to or admits in writing its inability to pay its debts as they become due;

**13.1.3.4** Authorizes, applies for, or consents to the appointment of a trustee or liquidator of all or a substantial part of its assets or has proceedings seeking such appointment commenced against it which are not terminated within sixty (60) days of such commencement;

**13.1.3.5** Files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the



United States pertaining to bankruptcy or any similar law of any jurisdiction or has proceedings under any such law instituted against it which are not terminated within sixty (60) days of such commencement; or

13.1.3.6 Has any substantial part of its property become subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without said levy, seizure, assignment or sale being released, lifted, reversed or satisfied within ten (10) days thereafter.

#### **14. ADVERSE REGULATORY DETERMINATION AND REGULATORY CONSIDERATIONS**

14.1 **Adverse Regulatory Determination.** ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IF ANY REGULATORY AUTHORITY DETERMINES, AT ANY TIME, THAT THIS AGREEMENT IN WHOLE OR IN PART IS UNLAWFUL OR UNENFORCEABLE BY CUSTOMER, ("ADVERSE REGULATORY DETERMINATION") CUSTOMER SHALL HAVE THE RIGHT, AT ITS SOLE OPTION AND DISCRETION, (i) TO TERMINATE THIS AGREEMENT, IN WHOLE OR IN PART, INCLUDING ANY PURCHASE ORDER ISSUED HEREUNDER, IN WHOLE OR IN PART, IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 12.2.4 AND 12.3 HEREOF, UPON NO LESS THAN TEN (10) DAYS PRIOR WRITTEN NOTICE TO BELLSOUTH, (ii) TO CONTINUE TO TAKE THE SERVICES UNDER ANY LAWFUL RATES, TERMS AND CONDITIONS SET FORTH IN ANY TARIFF, (iii) TO CONTINUE TO TAKE SERVICES UNDER ANY UNEXPIRED CSA AGREEMENTS BETWEEN CUSTOMER AND BELLSOUTH, AND UPON CUSTOMER'S ELECTION OF ALTERNATIVE (ii) OR (iii) PRECEDING, SAID NEW RATES, TERMS AND CONDITIONS WILL AUTOMATICALLY REPLACE THE RATES, TERMS AND CONDITIONS SET FORTH HEREIN, OR (iv) TO RENEGOTIATE THE RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT (INCLUDING THE RATES, TERMS AND CONDITIONS AVAILABLE TO OTHER CUSTOMERS), TO BE FILED WITH THE APPLICABLE REGULATORY AUTHORITIES. UPON CUSTOMER'S ELECTION TO EXERCISE ITEM (iv) PRECEDING, BELLSOUTH COVENANTS AND AGREES TO USE ITS BEST COMMERCIALY REASONABLE EFFORTS TO RENEGOTIATE SUCH RATES, TERMS AND CONDITIONS OF A REVISED CSA AGREEMENT, AND TIME WILL BE OF THE ESSENCE IN SUCH RENEGOTIATION AND FILING.

#### **15. MISCELLANEOUS**

15.1 **Advertising or Publicity.** Except as otherwise agreed to in writing between the Parties, neither Party shall advertise or publish any materials related to this Agreement.

**15.2 Assignment by Customer.** Customer shall have the right to assign this Agreement to any CMRS Affiliate of Customer. This Agreement shall be binding upon and inure to the benefit of Customer and its successors and assigns. This Agreement shall be deemed automatically assigned to any successor-in-interest to Customer created by merger, acquisition, consolidation or divestiture.

**15.3 Assignment by BellSouth.** BellSouth shall neither assign its rights nor delegate its obligations hereunder to any third party without the express written consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign or delegate its obligations hereunder to any Affiliate of BellSouth without the prior written consent of the Customer but upon reasonable written notice to Customer; provided, however, such assignment shall not relieve BellSouth of any liabilities hereunder. This Agreement shall be binding upon and inure to the benefit of BellSouth and its successors and assigns.

**15.4 Notices.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective upon receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid; or (iv) by prepaid telecopier, telex, or other similar means of electronic communication (followed by confirmation on the same or following day by mail as aforesaid). All notices given under this Agreement shall be addressed, in the case of Customer, as follows:

Powertel, Inc.  
1233 O.G. Skinner Drive  
West Point, GA 31833  
Attn: Jill F. Dorsey  
Vice President - General Counsel

with a copy to:

Gerry, Friend & Sapronov, LLP  
Three Ravinia Drive  
Suite 1450  
Atlanta, GA 30346  
Attn: Walt Sapronov, Esq.

and, in the case of BellSouth, as follows:

Mr. Scott Schaefer  
675 West Peachtree Street, N.E.  
Room 34A51  
Atlanta, Georgia 30375

Mr. William Warburton  
675 West Peachtree Street, N.E.  
Room 34A51  
Atlanta, Georgia 30375

**15.5 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the following laws in the following order of priority (i) the laws of the State of Georgia, without regard to Georgia's conflict of law principles, (ii) the various State Tariffs, and (iii) State utility codes authorizing the execution and the filing of this Agreement with the applicable Regulatory Authorities in the States.

**15.7 No Waiver.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding on either Party unless evidenced by a written notice or amendment signed by an authorized representative of the Party to be bound.

**15.8.1 Each Party shall notify an appropriate representative of the dispute in writing, setting forth relevant facts and explaining why the Party believes the dispute should be resolved in its favor.**

15.8.2 Within five (5) Business Days after such notice has been given, the program managers for each Party shall meet, by conference call or in person, in an effort to resolve the dispute. If they are unable to do so, they shall prepare a joint report, detailing the reasons for the dispute and each Party's position, and shall deliver the report within five Business Days after their meeting to a senior executive within each company, selected by the respective program manager.

15.8.3 The senior executives shall meet, by conference call or in person, within ten calendar days from delivery of their program managers' reports, in an effort to resolve the dispute.

15.8.4 If the senior executives cannot resolve the dispute, then either Party may institute arbitration as hereinafter set forth.

15.9 **Arbitration.** Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled by binding arbitration in Atlanta, Georgia, in accordance with the Commercial Arbitration Rules of American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

15.10 **Entirety of Agreement.** This Agreement (together with all Appendices, Exhibits, Schedules and all Purchase Orders accepted by BellSouth from time to time pursuant to Section 3.3.3 hereof) constitute the entire agreement between the Parties with respect to the subject matter hereof, and upon satisfaction of all regulatory approvals pursuant to Section 2.3.1 hereof, superseding all prior understandings and agreements (including without limitation any existing CSA agreements entered into by the Parties prior to the Effective Date), and may not be modified or altered except by a written instrument duly executed by the Parties.

15.11 **Severability.** Should any provision or portion of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then, at Customer's sole option and discretion (i) the remaining provisions of this Agreement shall remain in full force and effect, or (ii) Customer may terminate this Agreement without liability in accordance with Section 12.2.4 hereof.

15.12 **Headings.** Headings used in this Agreement are for reference purposes only, and shall not be deemed a part of this Agreement. The recitals set forth at the outset of this Agreement shall be deemed to be a part hereof.

15.13 **Survival.** The following provisions of this Agreement shall survive termination or expiration:

- 15.13.1 Section 8.1, Compliance with Laws;
- 15.13.2 Section 8.3, Non-Suspension of Services;
- 15.13.3 Section 9, Intellectual Property Indemnification;

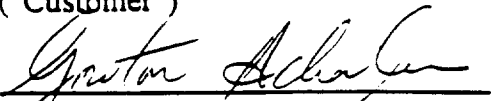


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

POWERTEL, INC.

("Customer")

By:



Authorized Signature

GORTON ACHARYA

Printed Name

VICE PRESIDENT

Title

POWERTEL ATLANTA, INC.

("Customer")

By:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

POWERTEL BIRMINGHAM, INC.

("Customer")

By:

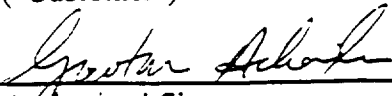
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

*[signatures continued on the following page]*

POWERTEL JACKSONVILLE, INC.  
("Customer")

By:   
Authorized Signature  
GOWTONI ACHAMSON  
Printed Name  
VICE PRESIDENT  
Title

POWERTEL KENTUCKY, INC.  
("Customer")

By: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title


POWERTEL MEMPHIS, INC.  
("Customer")

By: \_\_\_\_\_  
Authorized Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

*[signatures continued on the following page]*

BELLSOUTH TELECOMMUNICATIONS,  
INC.  
("BellSouth")

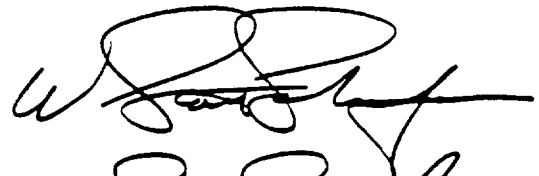
By:

  
Authorized Signature

GORDON ACHAIZAN  
Printed Name

VICE PRESIDENT  
Title

By:



W. Scott Sumner

President - International Service  
BellSouth



**APPENDIX I**

**ANNUAL REVENUE COMMITMENT AND DISCOUNTS**

## APPENDIX I

### ANNUAL REVENUE COMMITMENT AND DISCOUNTS

<u>Contract Year</u>	<u>Revenue Commitment</u>	<u>Discount</u>
Year 1	\$7 million	31%
Year 2	\$7.5 million	32%
Year 3	\$8 million	33% <i>4/62</i>
Year 4	\$8.5 million	34%
Year 5	\$9 million	35%

The Discounts listed above are in addition to, and apply to Charges after application of, all applicable discounts for the Services set forth in Schedule 1.47 hereof.

APPENDIX II  
ELIGIBLE SERVICES

## APPENDIX II

### ELIGIBLE SERVICES

Services to be provided by BellSouth to Customer pursuant to this Agreement and Charges for which contribute to the ARC are as follows:

- A. - MegaLink (DS-1)
- B. - LightGate (DS-3)
- C. - SmartRing Services

#### **D. DESIGN SUPPORT SERVICES:**

1. BellSouth shall provide Customer with Design Support Services for new Site provisioning or Installation of Services at a new Site at no additional charge to the Customer. Design Support Services include:

a. The Services of a dedicated system designer from the date of the execution of this Agreement to Customer's activation of CMRS service at each of its Sites in all of Customer's license areas in the BellSouth service areas covered in this Agreement;

b. Initial system design;

c. Initial planning of new cell sites;

d. Site visits for quotes of all special engineering and construction charges;

e. Site construction meeting; and

f. Final site inspection.

2. Any Design Support Services provided to Customer other than for new Site provisioning or Installation of Services at a new Site will be provided to Customer at the rate of \$175 per hour.

3. BellSouth agrees to perform the annual network optimization at no charge to Customer. Any additional network optimization services requested by Customer will be provided to Customer at the rate of \$175 per hour.

4. The charges for Design Support Services and network optimization services, if any, at Customer's option, may be deferred and allocated over the term of the Agreement at an annual interest rate of twelve percent (12%) per annum. In the event of Early Termination of this Agreement, any deferred charges will be due fifteen (15) days after the termination becomes effective.

**APPENDIX III**  
**INSTALLATION SCHEDULE**

**APPENDIX III**

**INSTALLATION SCHEDULE**

**[MUST LIST SERVICE ORDER PERIOD FOR EACH SERVICE AT EACH SITE]**

APPENDIX IV

PERFORMANCE SPECIFICATIONS

## APPENDIX IV

### PERFORMANCE SPECIFICATIONS

<u>TR# / ID</u>	<u>Issue / Date</u>	<u>Technical Reference Title</u>
TR-73501	D/Jul 1995	LightGate® Service Interface and Performance Specifications
TR-73525	C/May 1996	MegaLink® Service, BellSouth® MegaLink® Channel Service, & BellSouth® MegaLink® Plus Service Interface and Performance Specification
TR-73582	B/Dec 1994	SMARTRing® Service OC-N & STS-1 Interface and Performance Specifications



TENNESSEE ADDENDUM TO CSA No. TN98-4502-00

1. Customer and BellSouth acknowledge that various competitive alternatives are available to Customer in the State of Tennessee, including competitive alternatives to services provided herein, as evidenced by one or more of the following:
  - A. Customer has received offers for comparable services from one or more other service providers<sup>1</sup>;
  - B. Customer is purchasing or has purchased comparable services from one or more other service providers<sup>2</sup>;
  - C. Customer has been contacted by one or more other service providers of comparable services; and
  - D. Customer is aware of one or more other service providers from whom it can currently obtain comparable services.
2. Customer and BellSouth agree that the Customer's early termination of the CSA without cause will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages as specified in Section 12 of the CSA. Customer and BellSouth agree that the early termination provision in Section 12 represents a reasonable estimate of such damages and is not a penalty.

Powertel, Inc.

BY: Jim COOVER  
Printed Name

BY: Jim Coover  
Authorized Signature

TITLE: VP-NETWORK OPS - GIG

DATE: 5-11-00

BellSouth Telecommunications, Inc.

BY: ELINA G Rodriguez  
Printed Name

BY: Elina G Rodriguez  
Authorized Signature

TITLE: SALES - AVP

DATE: 5-11-00

**Attachment to Addendum  
CSA TN98-4502-00**

1. Customer has received offers for comparable services from other service providers including Time Warner and NextLink.
2. Customer is currently using comparable services provided by other service providers including Time Warner.

Customer's Initials

JP

Date

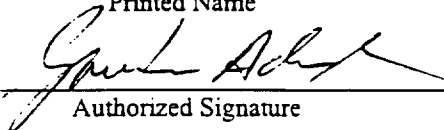
5-11-00

**CONFIRMATION OF CUSTOMER'S DECISION  
NOT TO AGREE TO PROPOSED TENNESSEE ADDENDUM  
TO CSA NO. TN98-4502-00**

Customer acknowledges the BellSouth Telecommunications, Inc. has presented Customer with the attached Addendum to CSA No. TN98-4502-00 and has requested Customer to agree to the Addendum. Customer has decided not to agree to the attached unsigned Addendum. After Customer informed BellSouth of its decision not to agree to the attached unsigned Addendum, BellSouth presented Customer with another version of the Addendum which is acceptable to the Customer and which is also attached with the appropriate signatures.

Powertel, Inc.

BY: Gowton Achamir  
Printed Name

BY:   
Authorized Signature

TITLE: VP Engineering

DATE: 10/26/00

COPY

## TENNESSEE ADDENDUM TO CSA No. TN98-4502-00

1. Customer and BellSouth acknowledge that various competitive alternatives are available to Customer in the State of Tennessee, including competitive alternatives to services provided herein, as evidenced by one or more of the following:
  - A. Customer has received offers for comparable services from one or more other service providers<sup>1</sup>;
  - B. Customer is purchasing or has purchased comparable services from one or more other service providers<sup>2</sup>;
  - C. Customer has been contacted by one or more other service providers of comparable services; and
  - D. Customer is aware of one or more other service providers from whom it can currently obtain comparable services.
2. Customer and BellSouth agree that Customer's Early Termination of the Agreement or Customer's Partial Termination of the Agreement will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages. Customer and BellSouth agree that the amount of liquidated damages due upon Early Termination shall be the lesser of (a) six percent (6%) of the total Agreement amount; or (b) an amount equal to:

- (1) The discounts received for the life of the Agreement or for the previous 12 months, whichever is less; and
- (2) The prorated portion of the Agreement implementation and tracking costs, which consist of a variable cost that is based on the number of earning numbers and a fixed cost, calculated as follows:

Variable Cost =        Number of Customer Earning Numbers x \$34.61

Fixed Cost =            \$6,969.83

Variable Cost + Fixed Cost = Total Implementation and Tracking Costs

Prorated Implementation and Tracking Costs = Total Implementation and Tracking Costs x (Agreement Months Remaining/Total Agreement Months)

The number of Customer Earning Numbers will be those in effect at the time that the Customer provides written notification of intent to terminate the Agreement.

Customer and BellSouth agree that the amount of liquidated damages due upon Partial Termination of the Agreement shall be the discounts received for each discontinued

service element over the life of the Agreement or for the previous 12 months, whichever is less. In any event, the amount of liquidated damages due upon Partial Termination of the Agreement shall not exceed six percent (6%) of the total Agreement amount.

Notwithstanding any provisions in the Agreement to the contrary, Customer and BellSouth agree that to the extent that this Agreement applies to services provided within the State of Tennessee, this Paragraph of this Addendum sets forth the total amounts of liquidated damages the Customer must pay upon Early Termination of the Agreement without cause or upon Partial Termination of the Agreement. Customer and BellSouth agree that these amounts represent a reasonable estimate of the damages BellSouth would suffer as a result of Early Termination or Partial Termination and that these amounts do not constitute a penalty.

3. Customer and BellSouth acknowledge and confirm their understanding that:
  - (a) Customer's agreement to pay the difference between the actual billed revenue for its V&T Eligible Services and its contract revenue commitment, as set forth in Section 6.11.2 of the Agreement, does not apply upon Customer's Early Termination of the Agreement; and
  - (b) Customer must therefore pay only the amount calculated in accordance with Paragraph 2 of this Addendum upon Early Termination of the Agreement.
4. Customer and BellSouth agree that with regard to services provided within the State of Tennessee, the term of this Agreement is 36 months. Customer and BellSouth further agree that with regard to services provided within the State of Tennessee, Customer may renew the CSA for an additional term of 24 months by providing BellSouth written notice of its intent to do so within 60 days of the expiration of the initial 36-month term. Customer and BellSouth understand and agree that any such renewal option exercised by the Customer is subject to approval by the Tennessee Regulatory Authority.

Powertel, Inc.

BellSouth Telecommunications, Inc.

BY: \_\_\_\_\_  
Printed Name

BY: \_\_\_\_\_  
Printed Name

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Authorized Signature

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Attachment to Addendum**  
**CSA TN98-4502-00**

1. Customer has received offers for comparable services from other service providers including Time Warner and NextLink.
2. Customer is currently using comparable services provided by other service providers including Time Warner.

Customer's Initials \_\_\_\_\_

Date \_\_\_\_\_

## **TENNESSEE ADDENDUM TO CSA No. TN98-4502-00**

1. Customer and BellSouth acknowledge that various competitive alternatives are available to Customer in the State of Tennessee, including competitive alternatives to services provided herein, as evidenced by one or more of the following:
  - A. Customer has received offers for comparable services from one or more other service providers<sup>1</sup>;
  - B. Customer is purchasing or has purchased comparable services from one or more other service providers<sup>2</sup>;
  - C. Customer has been contacted by one or more other service providers of comparable services; and
  - D. Customer is aware of one or more other service providers from whom it can currently obtain comparable services.
2. Customer and BellSouth agree that Customer's Early Termination of the Agreement or Customer's Partial Termination of the Agreement will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages. Customer and BellSouth agree that the amount of liquidated damages due upon Early Termination are specified in Section 12.2 of the Agreement. Customer and BellSouth agree that the amount of liquidated damages due upon Partial Termination of the Agreement are specified in Section 12.4 of the CSA. Customer and BellSouth agree that these termination provisions represent a reasonable estimate of such damages and are not penalties.
3. Customer and BellSouth acknowledge and confirm their understanding that:
  - (a) Customer's agreement to pay the difference between the actual billed revenue for its V&T Eligible Services and its contract revenue commitment, as set forth in Section 6.11.2 of the Agreement, does not apply upon Customer's Early Termination of the Agreement; and
  - (b) Customer must therefore pay only the amount calculated in accordance with Section 12 upon Early Termination of the Agreement.

4. Customer and BellSouth agree that with regard to services provided within the State of Tennessee, the term of this Agreement is 36 months. Customer and BellSouth further agree that with regard to services provided within the State of Tennessee, Customer may renew the CSA for an additional term of 24 months by providing BellSouth written notice of its intent to do so within 60 days of the expiration of the initial 36-month term. Customer and BellSouth understand and agree that any such renewal option exercised by the Customer is subject to approval by the Tennessee Regulatory Authority.

Powertel, Inc.

BY: Gowton Achaibar  
Printed Name

BY: [Signature]  
Authorized Signature

TITLE: VP Engineering

DATE: 10/26/00

BellSouth Telecommunications, Inc.

BY: Elena G. Rodriguez  
Printed Name

BY: [Signature]  
Authorized Signature

TITLE: Sales AVP

DATE: 10/3/00



**Attachment to Addendum  
CSA TN98-4502-00**

1. Customer has received offers for comparable services from other service providers including Time Warner and NextLink.
2. Customer is currently using comparable services provided by other service providers including Time Warner.

Customer's Initials SA

Date 10/26/00